

REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019

The Board of Appeals meeting was called to order by Chairman Neset at 5:08 p.m.

BOARD MEMEBERS PRESENT. Breanne Berning, Nick Hallbeck, Mary Claire Potter, and Karen Neset.

BOARD MEMBERS ABSENT. Carah Koch and Jon Huhn.

STAFF MEMBERS IN ATTENDANCE: David Schofield (SEH Consultant), Emily Boles, and Michael Johnson.

OTHERS PRESENT. Ryan Cari, Heidi Gilbert, Nancy Bieraugel, Bruce Lenzen, Rich Cooke, and Mike Kennedy.

Discussion and possible action on April 24, 2019 meeting minutes. Motion by Potter, seconded Hallbeck to approve the minutes of the April 24, 2019 Board of Appeals meeting. All ayes (4-0). Motion carried.

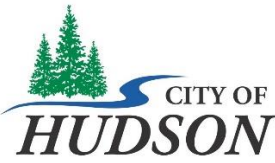
Public hearing on a variance application by Todd and Heidi Gilbert requesting a variance for expansion of a non-conforming principal structure (NR 118.08(2)(b)(9) & City Code § 255-18) at 2 Birkmose Park, Appeal No. 242. Chairman Neset read the public hearing notice and opened the public hearing. Neset requested the applicant present their proposed addition and requested variance. Ryan Cari, legal representative of the applicant, reviewed the proposed 1,750 ft addition and variance application. Cari noted that the variance is for expansion of a non-conforming principle structure exceeding 2,000 square feet. Cari highlighted that all improvements were proposed to be located away from the river (east side of structure). Cari provided history of the site and said that the NR 118 requirements prevent the applicants from improving their home which was built in the 1940's. He continued to state that the addition is away from the riverway and not for financial gain. Neset asked for clarification that the proposed addition was out of the 40 ft bluffline setback. It was confirmed that this was true.

David Schofield, SEH consultant, reviewed the staff report and purpose of NR118. Schofield reviewed the decision criteria and suggested conditions of approval if the Board wished to approve the variance request. Neset asked for a clarification regarding the letter dated November 13, 2019 from the Wisconsin DNR. Mike Johnson stated that the DNR wants to be consistent when reviewing variance requests and generally submit broad letters.

Nancy Bieraugel, 14 Birkmose Park, stated that she had not seen the plans for the addition and asked about the addition's height. Cari stated that the addition would not be higher than the current building height. Bieraugel also expressed concerns for setting a decision precedence and environmental preservation stating the St. Croix River is a treasure.

Emily Boles reviewed the letters received by staff including the following:

- Email from Michael Leverty received 11/18/2019
- Email from Lee Genecki received 11/12/2019



REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019

- DNR Letter from Kay Lutz dated 11/13/2019

Motion by Potter, seconded by Hallbeck to close the hearing. All ayes (4-0). Motion carried.

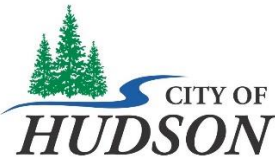
Discussion and possible action on a variance application by Todd and Heidi Gilbert requesting a variance for expansion of a non-conforming principal structure (NR 118.08(2)(b)(9) & City Code § 255-18) at 2 Birkmose Park, Appeal No. 242. Hallbeck agreed with the comments made by David Schofield in the staff report and that the bluffline is preserved. Hallbeck stated the DNR letter echoed what the Board would need to review/consider. He continued to state that the applicant had additional hardship due to familial status to care for aging parents and from not being able to expand the structure.

Potter emphasized that all improvements were away from the river and that improvements to the structure may be needed. She noted that the addition conforms with height and all other NR 118 requirements. Neset said that the hardship is that the applicants cannot expand without completely demolishing the structure. Neset echoed Potter's statement that the addition is towards the east, is the same height as the current structure, and is not in the sightline of the river.

Nancy Bieraugel, 14 Birkmose Park, asked if the owners would be able to do any further additions to the height if they wanted to. Schofield stated that any expansion beyond the granted variance would require additional variance approval. Berning noted that each variance request is discussed and considered separately, and precedence is not set.

Motion by Hallbeck, seconded by Potter to grant the requested variance for the construction of a 1,750 square foot addition to the southeast side of the existing structure (City of Hudson § 255-18 and Wisconsin Administrative Code NR 118.08(2)(b)(9)) at 2 Birkmose Park based on the following findings:

- I) *Denial of variance would result in hardship to the property owner due to physical characteristics of the site.*
Strict adherence to the requirements of City of Hudson and Wisconsin Administrative Code would prevent any addition to the existing structure, or demolition of the existing structure and constructing a new structure outside of the 40-foot bluffline setback. The property has steep slopes and is located on the bluff which create additional hardship.
- II) *The conditions upon which a petition for a variance is based are unique to the property for which variation is being sought.*
This particular combination existing structure location and footprint is unique to 2 Birkmose Park. The structure already exceeds 2,000 square feet. The applicant has noted that the conditions existed prior to their purchase of it.
- III) *The petition for a variance is not based exclusively upon a desire to increase the value or income potential of the property.*



REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019

There is no indication that the purpose of the requested variance is based exclusively upon economic considerations. Testimony was given that the structure will be the owners will residence and is being expanded to accommodate family members. Additionally, investment into property improvements does not necessarily increase value or show desire for income potential.

- IV) *The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.*
The requested variance is not believed to be detrimental to adjacent properties or the public welfare. The location of the structure expansion is away from the riverway, bluffline, and steep slopes. Additionally, a public hearing was held to recieve testimony from the public before deciding on the requested variance. The Board of Appeals received positive responses from three neighboring property owners.
- V) *The proposed variance will not jeopardize the spirit and general and specific purposes of the Zoning Code.*
The requested variance is not believed to undermine the spirit of the Code. The code is believed to protect the St. Croix River and bluffline areas in the best way that we can. The proposed addition is on the east side of the property and away from the river.

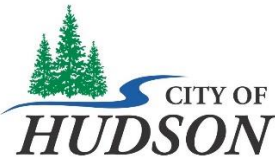
Approval is granted to permit the construction of a 1,750 square foot addition to the southeast side of the existing structure at 2 Birkmose Park with the following conditions:

1. Property owner must obtain all applicable Building Permits.
2. No structures shall be expanded or constructed within the 40-foot bluffline setback.
3. No filling and/or grading activities nor vegetation removal shall occur within the slope preservation zone.
4. Any omissions of any conditions not listed shall not release the property owner/developer from abiding by City Ordinances.
5. All conditions run with the land and are binding upon the property owner and all heirs, successors, and assigns. The sale or transfer of all or any portion of the property does not relieve the original property owner from meeting any conditions.

All ayes (4-0). Motion carried.

Public hearing on a variance application by Riverfront Properties, Inc. requesting a variance for reduced fill extension (NR 116.13(2)(b)(2) & City Code §253-4.3(B)(1) at 106 Buckeye Street, Appeal No. 243. Chairman Neset read the public hearing notice and opened the public hearing. Neset requested the applicant present their proposed plans and requested variances.

Ryan Cari, legal representative of Riverfront Properties, Inc., reviewed the proposed new multi-use structure and stated the current building was at the end of its useful life. Multiple renderings of the new structure were shared with the Board. Potter asked what the height would be compared to the



**REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019**

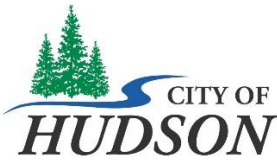
neighboring River City Center property at 109 Second Street. Bruce Lenzen, applicant, said the building would be within about 2 feet of the River City Center building height. Cari reviewed that the overall site elevation needed to be raised two feet, up to 694 ft, which required the addition of retaining walls at the base of the structure and 15 ft fill extension around the building. Cari stated that the fill extension requirements conflict with City Code 255-17 which require buildings in the B-3 zoning district to align with the right-of-way (Buckeye Street and First Street) as well as conflicts with the zero-lot line setback which the applicants “presently enjoy”.

Cari reviewed the request for an elevator underrun pit below the regional flood elevation and reviewed the Gilbert’s variance application including unnecessary hardship, unique property limitation, and protection of the public interest. He highlighted that an elevator is required by for ADA compliance.

Cari described Appeal No. 243 and stated that the applicant is requesting a variance for the entire property due to raising the building 2 ft impacting the entire property. Cari stated that the building currently stands on or near the property lines including the south property line. He stated that this was not created by the property owner. Cari said the point of the 15 ft fill extension was for adequate means of evacuation and emergency access. He stated that the building is designed in such a way that this is not a factor and designed with fire escapes. Cari said that the variance is not for profit and they have signed a temporary construction easement with the St. Croix Marina their closest and most impacted neighbor.

Schofield stated that the applicant has done a tremendous job to meet all the requirements of NR 118 and is requesting two floodway variances under NR 116. Schofield described that the building plans raise the building two feet and utilize a retaining wall to do so and continue to meet the NR 118 building height of 45 ft. He said that state building code requires an elevator with a 5 ft underrun pit which prompted the applicant to request a variance. Schofield stated the 15 ft fill extension allows for emergency access and prevents erosion that may undermine the building structure.

Discussion was held regarding the letter received from Michelle Staff with the Wisconsin DNR dated November 11, 2019. Schofield said that the floodway study performed by SEH to distinguish between the floodway and flood fringe would be, if it was not already, adopted by the City of Hudson. Schofield also described that the LOMR-F would be applied for by the applicant after City and state plan approvals. Schofield reviewed page 5 of the staff report which included the considerations for Appeal #244 for the elevator underrun pit. Schofield then reviewed page 4 of the staff report which described the considerations for Appeal #243 for the fill extension relief request. He highlighted that City Code 255-17.10 requires structures in the downtown overlay district be aligned to the right of way, specifically Buckeye Street (north) and First Street (west). Schofield stated that the structure does not need to align with the south property line and the request for reduced fill extension to the south is a desire and not a requirement. Schofield stated that the fill extension to the south may be desirable for emergency access. He also said that while zoning code allows for a zero-foot building setback on the south property line, it is not required. Schofield stated that he did not believe the applicant had addressed the south property line fill-extension requirement but proposed the Board may wish to grant a variance for the north and west fill extensions.



REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019

Hallbeck asked about the building permit approval process. Schofield stated that if the variance for fill extension reduction was fully granted, the site plans would not be required to provide the fill extension beyond the granted variance. However, emergency departments or building inspectors may request an emergency access plan, wider stairways, or other building layout changes.

Potter confirmed that the River City Center property at 109 Second Street had a similar variance request for reduced fill extension from 15 feet to approximately 12 feet. Potter asked if the applicant had any other option than a request for fill extension reduction relief down to about one foot. Hallbeck asked if an easement with the marina had been explored. Cari stated that the applicant had attempted to purchase property from the marina, but they were not open to a purchase. Cari continued to state that to take the building down, manage substandard soil, and go up again, his applicants see it as a “deal killer” to not receive the granted variance for fill extension relief. Cari confirmed that the applicants will be applying for the LOMR to remove the building from the floodplain status. Cari also emphasized that the DNR letter states that §253.1.5(E) does not explicitly require 15 feet of fill extension. He also stated while the request for relief towards the south property line was not directly conflicting with another code, the applicant still has a conflict with the zero-foot building setback. The applicant would like to build up to within two feet of the zero-lot line and has hardship and demonstrated no risk.

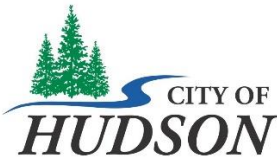
Mike Kennedy, representative for the St. Croix Marina at 16 First Street, stated that the Marina is very much in support of the new building. He said that the current building is an eyesore and the Marina has approved a temporary construction easement to help the applicant build. The Marina did not wish to sell property to Riverfront Properties, Inc. Kennedy stated that the 300 slip owners are in support of improvements to the property.

Motion by Potter, seconded by Hallbeck to close the hearing. All ayes (4-0). Motion carried.

Discussion and possible action on a variance application by Riverfront Properties, Inc. requesting a variance for reduced fill extension (NR 116.13(2)(b)(2) & City Code §253-4.3(B)(1) at 106 Buckeye Street, Appeal No. 243. Potter said her major concern was the request for reduced fill extension. Schofield reiterated that the fill extension provides accessibility around a structure and protection to a structure. He noted that the engineered retaining wall will be more protective than soil draping. Potter stated that the current structure is a blighted building and the proposed use of office and residential uses fits the mixed-use category. She noted that the applicant is looking to upgrade the structure and is willing to invest time and money to make something better. It was also questioned if it is the applicant’s own hardship if they only want to execute the submitted plan.

Hallbeck stated that the fill issue may be self-created and the applicant would need to work with a smaller space when the current building is demolished. Hallbeck noted that the land and grade is already there causing restrictions. Hallbeck reiterated that the applicant is possibly creating their own hardship.

Neset stated that she felt that it is a reasonable accommodation to ask for fill on the south side of the property. Discussion was held regarding fill options with the Marina property. Mike Kennedy stated



REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019

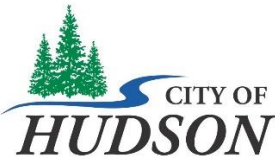
the Marina could not give up land to their neighbors because they use the access driveway to pull boats into their service shop.

Discussion was held regarding possibly postponing decision on the variance request for fill extension relief on the south side of the property. Potter requested options for the south side of the property. Berning stated that the applicant had not tried to appease the code and that there may be a possible fill extension between 1 to 15 feet. Further discussion was held regarding self-created hardship and fill extension between 1 to 15 feet. Mike Johnson stated that it is not the Board's task to suggest any changes to the request. Discussion was held regarding the appeal process and emergency services review of proposed plans.

Motion by Potter, seconded by Hallbeck to approve the requested variance from City of Hudson § 253-4.3(B)(1) and Wisconsin Administrative Code NR 116.13(2)(b)(2) for that portion of Appeal No. 243 to reduce fill extension from 15' to 1.05' adjacent to the west and north property lines and postpone action on the request to reduce fill extension from 15' to 1.05' adjacent to the south property line based on the following findings:

- I) *Denial of variance would result in hardship to the property owner due to physical characteristics of the site.*
The provisions of City of Hudson § 255-17.10, which requires alignment of west and north building faces with the First Street and Buckeye Street rights-of-way, respectively, conflicts with City of Hudson § 253-4.3(B)(1) and Wisconsin Administrative Code NR 116.13(2)(b)(2) which would effectively require a 15 foot setback from the property line. Therefore, it is not possible to comply both regulations.

There is no requirement that the south building face align with the south property line. Therefore, this portion of the variance has been postponed for further discussion by the Board of Appeals.
- II) *The conditions upon which a petition for a variance is based are unique to the property for which variation is being sought.*
This particular combination adjacent grades, floodplain elevations and conflicting regulations is unique to the Riverfront Square site.
- III) *The petition for a variance is not based exclusively upon a desire to increase the value or income potential of the property.*
There is no indication that the purpose of the requested variance is based exclusively upon value or income potential motivations.
- IV) *The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.*



REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019

The applicant has provided dryland access from the east side of the building and all units have direct access thereto. The requested variance is not believed to be detrimental to adjacent properties or the public welfare. A public hearing was held to receive testimony from the public before deciding on the requested variance.

- V) *The proposed variance will not jeopardize the spirit and general and specific purposes of the Zoning Code.*

The requested variance is not believed to undermine the spirit of the Code.

Approval is granted to permit reduced fill extension from 15' to 1.05' for the west and north property lines and decision postponed for the south property line with the following conditions:

1. Applicant must provide an engineered floodproofing plan for the elevator pit in accordance with Wisconsin Administrative Code NR 116.16.
2. Applicant must obtain final development plan approval from Plan Commission and Common Council.
3. Applicant must obtain all applicable Wisconsin DNR and FEMA approvals.
4. Applicant must obtain all applicable Building Permits and State Plan Approvals.
5. Any omissions of any conditions not listed shall not release the property owner/developer from abiding by City Ordinances.
6. All conditions run with the land and are binding upon the property owner and all heirs, successors, and assigns. The sale or transfer of all or any portion of the property does not relieve the original property owner from meeting any conditions.

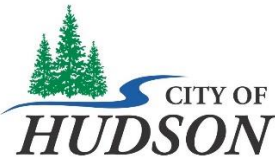
All ayes (4-0). Motion carried.

Note: When a floodplain variance is granted, the Board of Appeals shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy of this notice shall be maintained with the variance record.

Public hearing on a variance application by Riverfront Properties, Inc. requesting a variance for an elevator underrun pit below the regional flood elevation (NR 116.13(2)(a) & City Code §253-4.3(B)(2) at 106 Buckeye Street, Appeal No. 244. Chairman Neset opened the public hearing and asked for public comment. No public comments were received. Motion by Hallbeck, seconded by Potter to close the hearing. All ayes (4-0). Motion carried.

Discussion and possible action on a variance application by Riverfront Properties, Inc. requesting a variance for an elevator underrun pit below the regional flood elevation (NR 116.13(2)(a) & City Code §253-4.3(B)(2) at 106 Buckeye Street, Appeal No. 244.

Motion by Potter, seconded by Hallbeck to approve the requested variance from City of Hudson § 253-4.3(B)(2) and Wisconsin Administrative Code NR 116.13(2)(a) to allow an elevator underrun pit 3.0' below the regional flood elevation based on the following findings:

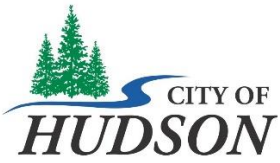


REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019

- I) *Denial of variance would result in hardship to the property owner due to physical characteristics of the site.*
The requirements of International Building Code 1009.2.1 and the Americans with Disabilities Act, which require an elevator, conflict with City of Hudson § 253-4.3(B)(2) and Wisconsin Administrative Code NR 116.13(2)(a). It is not possible to raise the building an additional three feet and still maintain handicapped accessible dryland access.
- II) *The conditions upon which a petition for a variance is based are unique to the property for which variation is being sought.*
This particular combination adjacent grades, floodplain elevations and conflicting regulations is unique to the Riverfront Square site.
- III) *The petition for a variance is not based exclusively upon a desire to increase the value or income potential of the property.*
There is no indication that the purpose of the requested variance is based exclusively upon value or income potential motivations.
- IV) *The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.*
The applicant will be required to floodproof the elevator pit in accordance with Wisconsin Administrative Code NR 116.16. The requested variance is not believed to be detrimental to adjacent properties or the public welfare. A public hearing was held to receive testimony from the public before deciding on the requested variance.
- V) *The proposed variance will not jeopardize the spirit and general and specific purposes of the Zoning Code.*
The requested variance is not believed to undermine the spirit of the Code.

Approval is granted to allow an elevator underrun pit 3.0' below the regional flood elevation with the following conditions:

1. Applicant must provide an engineered floodproofing plan for the elevator pit in accordance with Wisconsin Administrative Code NR 116.16.
2. Applicant must obtain final development plan approval from Plan Commission and Common Council.
3. Applicant must obtain all applicable Wisconsin DNR and FEMA approvals.
4. Applicant must obtain all applicable Building Permits and State Plan Approvals.
5. Any omissions of any conditions not listed shall not release the property owner/developer from abiding by City Ordinances.
6. All conditions run with the land and are binding upon the property owner and all heirs, successors, and assigns. The sale or transfer of all or any portion of the property does not relieve the original property owner from meeting any conditions.



**REGULAR MEETING OF THE BOARD OF APPEALS
CITY OF HUDSON
Wednesday, November 13, 2019**

All ayes (4-0). Motion carried.

Note: When a floodplain variance is granted, the Board of Appeals shall notify the applicant in writing that it may increase flood insurance premiums and risks to life and property. A copy of this notice shall be maintained with the variance record.

COMMUNICATIONS AND ITEMS FOR FUTURE AGENDAS.

None.

ADJOURNMENT.

Motion by Neset, seconded by Hallbeck to adjourn at 7:15 p.m. All ayes (4-0). Motion carried.

Respectfully submitted,
Emily Boles, Acting Secretary